

No. 17A-\_\_\_\_

IN THE  
**Supreme Court of the United States**

THE AMERICAN LEGION, THE AMERICAN LEGION DEPARTMENT OF MARYLAND, THE  
AMERICAN LEGION COLMAR MANOR POST 131,

*Applicants,*

v.

AMERICAN HUMANIST ASSOCIATION, STEVEN LOWE, FRED  
EDWARDS, BISHOP MCNEILL,

*Respondents.*

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the Fourth Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, applicants The American Legion, The American Legion Department of Maryland, and The American Legion Colmar Manor Post 131 (collectively, “American Legion”) respectfully request a 30-day extension of time, to and including June 29, 2018, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, seeking review of that court’s judgment in this case.

2. The Fourth Circuit entered judgment on October 18, 2017. *See American Humanist Ass’n, et al. v. Maryland Nat’l Capital Park & Planning Comm’n*, 874 F.3d 195 (4th Cir. 2017) (App. 1a-51a). Applicants filed a timely petition for rehearing *en banc*, which was denied on March 1, 2018. *See* App. 52a-70a. Unless extended, the time to file a petition for certiorari will expire on May 30,

2018. Pursuant to Supreme Court Rule 13.5, this application is being filed more than ten days before a petition for certiorari would otherwise be due. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

3. This case concerns the constitutionality of a nearly 100-year-old veterans memorial honoring the 49 men from Prince George’s County, Maryland, who fell in World War I. App. 4a-6a; App. 66a (Niemeyer, J., dissenting). Built between 1919 and 1925 by the American Legion and a group of bereaved Gold Star mothers, the memorial is shaped like a cross to mirror the cross-shaped gravemarkers of the European cemeteries in which their comrades and sons were buried. App. 6a; App. 67a (Niemeyer, J., dissenting). The memorial includes a large plaque that lists the names of those it honors and explains that “This Memorial Cross [is] Dedicated to the Heroes of Prince George’s County, Maryland, Who Lost Their Lives in the Great War for the Liberty of the World.” App. 7a; App. 66a (Niemeyer, J.,dissenting). The words “VALOR,” “ENDURANCE,” “DEVOTION,” and “COURAGE” are inscribed at its base, and the American Legion’s symbol is prominently displayed at the intersection of the cross’s horizontal and vertical arms. App. 6a-7a; App. 37a (Gregory, C.J., dissenting). The memorial stands in an area known as “Veterans Memorial Park,” surrounded by other monuments to the lives lost in the nation’s conflicts. App. 7a-8a; App. 67a (Niemeyer, J., dissenting).

4. For the first four decades of its existence, the memorial stood on land owned by the American Legion and was consistently used as a site for patriotic

events to honor veterans. App. 39a (Gregory, C.J., dissenting). Over time, the growth of roadways around the memorial led the State to determine that private ownership of the land occupied by the memorial was no longer safe, as it had become a traffic median. App. 39a (Gregory, C.J., dissenting). Accordingly, in March 1961, the Maryland-National Capital Park and Planning Commission (the “Commission”) took ownership of the land and, incidentally, the memorial, granting the local American Legion post an easement or similar legal right to conduct veterans commemorative events on the property, and a reversionary right to intervene in the care of the memorial should the Commission ever not be able to care for it. Another five decades then passed, during which the community used the memorial exclusively for events to honor veterans and responded to the memorial by continuing to surround it with other veterans memorials.

5. In 2012, the American Humanist Association lodged the first and only known complaint against the memorial, alleging that its presence on public land violates the Establishment Clause. App. 68a (Niemeyer, J., dissenting). After the AHA commenced this lawsuit in 2014, the District Court ruled the memorial was constitutional, explaining that no reasonable observer, acquainted with the history and purpose of the memorial, would conclude that the memorial endorsed religion. *See American Humanist Ass’n v. Maryland-Nat’l Capital Park & Planning Comm’n*, 147 F. Supp. 3d 373 (D. Md. 2015). A divided panel of the Fourth Circuit, however, reversed, determining over a powerful dissent by Chief Judge Gregory that the Commission’s decision to leave the memorial standing when it acquired the land

was an unconstitutional establishment of religion. According to the majority, although the government had articulated “legitimate secular purposes for displaying and maintaining the [memorial],” which contained “secular elements,” crosses possesses an “inherent religious meaning” that “easily overwhelm[ed]” the government’s secular purposes and the memorial’s history. App. 17a, 18a-21a, 22a-25a. As Chief Judge Gregory observed in dissent, the majority essentially adopted a “per se finding[ ] that all large crosses are unconstitutional despite any amount of secular history and context, in contravention of Establishment Clause jurisprudence.” App. 44a (Gregory, C.J., dissenting). A sharply divided Fourth Circuit denied *en banc* rehearing by a vote of 8-6, over dissents by Chief Judge Gregory, Judge Wilkinson, and Judge Niemeyer. *See* App. 52a-70a.

6. For reasons stated in the Commission’s recently filed application for an extension of time in which to file a petition for certiorari, among other reasons, this case presents a strong candidate for certiorari. *See* Case No. 17A1175. The Fourth Circuit’s decision cannot be reconciled with this Court’s precedents, directly conflicts with the decisions of other circuits that have permitted government displays using crosses to communicate a secular, commemorative, or historical message, and will lead to the destruction or disfigurement of hundreds of similar monuments throughout the country, including the two principal World War I memorials in Arlington National Cemetery – the Canadian Cross of Sacrifice and the Argonne Cross.

7. Jones Day and First Liberty Institute jointly represented the American Legion in the District Court and the Fourth Circuit, and will be filing a petition for certiorari on its behalf with this Court. However, over the coming weeks, counsel from Jones Day – Michael A. Carvin and Christopher DiPompeo – have substantial time commitments for other matters. Mr. Carvin, for example, is currently preparing for a trial in *Personal Touch Holding Corp. v. Felix Glaubach*, D.D.S., No. 11199-CB (Del. Ch.), will be filing a merits brief with the Fifth Circuit on May 31, 2018, in *Chamber of Commerce of the U.S.A., et al., v. IRS, et al.*, No. 17-51063 (5th Cir.), and is scheduled to present oral argument in Alabama state court on May 9 and the Sixth Circuit on June 6. *See Southall v. Trump*, No. 01-CV-2017-904877.00 (Ala. Cir. Ct.); *Nwanguma v. Trump*, No. 17-6290 (6th Cir.). And Mr. DiPompeo, who argued for the American Legion in the Fourth Circuit, will be preparing for a May 22, 2018, oral argument on motions to stay two cases in the Delaware Court of Chancery – *Motors Liquidation Company Avoidance Action Trust v. SSS Funding II, LLC*, No. 12248-VCS (Del. Ch.), and *Motors Liquidation Company Avoidance Action Trust v. Oaktree Loan Fund, L.P.*, No. 12191-VCS (Del. Ch.).

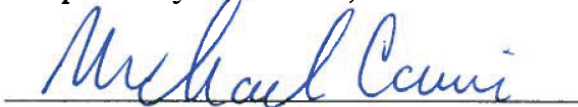
8. In addition, the Commission has recently retained Neal Kumar Katyal of Hogan Lovells US LLP, who was not involved in the proceedings below, to represent it before this Court. To allow Mr. Katyal sufficient time to familiarize himself with the case and because of substantial commitments for other matters, the Commission recently filed an application to extend its time to file a petition for certiorari by 30 days, to and including June 29, 2018. *See Case No. 17A1175.*

9. Applicants request this extension of time to provide counsel with sufficient time to research and fully address the important issues raised by the proceedings below, to permit counsel for the American Legion to coordinate with counsel for the Commission, and to ensure that the petitions for certiorari filed by the American Legion and the Commission are on the same schedule.

WHEREFORE, Applicants respectfully request that an order be entered extending the Applicants' time to file a petition for a writ of certiorari for 30 days, to and including June 29, 2018.

Dated: April 30, 2018

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael Carvin". The signature is written in a cursive style and is positioned above a horizontal line.

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